IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE N.V. RAMANA

WRIT PETITION NO : 25131 of 2004

Between:

Omkari Prabhu, S/o. Late Omkari Ramchander,
R/o. 1-6-287/A, Musheerabad, Hyderabad.

..... PETITIONER

AND

1 The Commissioner, Municipal Corporation of Hyderabad, Hyderabad.
2 The Additional Commissioner, Municipal Corporation of Hyderabad, Secunderabad Division, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction: (a) By declring the action of the Respondents in collecting consent letters only from the landlord/owner of the petitioner and not from the Petitioner (tenant) as per Section 146 and 147 of H.M.C. Act, as illegal and unconstitutional (b) direct the respondents not acquire the Petitioner's property bearing No. 4-1-172, size 12 X 11 feet comprising of ground floor at Subash Road, Secunderabad, bounded on NORTH by :Main Road, SOUTH BY: Neighbour's Property, EAST BY: Neighbour's shop belongs to Mohd. Mustafa Ali bearing No. 4-1-172, WEST BY : Neighbour's property bearing No. 4-1-171 without initiating Land Acquisition proceedings or without obtaining Petitioners consent. (c) to direct the Respondents not to demolish the Petitioner's property bearing No.4-1-172, size 12 X 11 feet, comprising of ground floor at subash Road Secunderabad, bounded on NORTH by :Main Road, SOUTH BY: Neighbour's Property, EAST BY: Neighbour's shop belongs to Mohd. Mustafa Ali bearing No. 4-1-172, WEST BY : Neighbour's property bearing No. 4-1-171 till the disposal of the Writ Petition.

Counsel for the Petitioner: MR.WASIM AHMED KHAN

Counsel for the Respondent No.: SMT.G.JYOTHI KIRAN

The Court made the following :

THE HONOURABLE SRI JUSTICE N.V.RAMANA

WRIT PETITION NO.25131 OF 2004

ORDER:

It is submitted by the learned counsel for the petitioner and admitted to by the learned Standing Counsel for the respondent-Corporation that the subject matter in this writ petition is squarely covered by the judgment of this Court in W.P.No.21198 of 1997 and batch, dated 3.2.1998 which was disposed of issuing certain directions to be followed by the Municipal authorities, Panchayat authorities and Revenue authorities for acquiring the land for road widening and/or for public purpose. Inter alia, the following directions were issued by the Division bench:

1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossesses or evict the occupants or demolish the property.

2. If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition they shall issue 60 days prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment or unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.

3. In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and

disburse the amount of damages quantified forthwith.

4. If the demolition is in respect of local bodies' Government property, the question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.

The respondent-Corporation before effecting any demolition of the houses of the petitioner, shall follow the above directions.

The writ petition is disposed of accordingly. No costs.

30.12.2004.

Note:

Issue Operative portion by wire.

B/o.

mdaa/ksr.

Copy to:

1 The Commissioner, Municipal Corporation of Hyderabad, Hyderabad.
2 The Additional Commissioner, Municipal Corporation of Hyderabad, Secunderabad Division, Secunderabad.

3. Two C.D.copies.